STATE OF MICHIGAN

COURT OF APPEALS

CHARLES A. HARPER, SR.

Plaintiff/Counter-Defendant-Appellant,

and

CAROLINE L. HARPER,

Plaintiff/Counter-Defendant,

v

LESLIE ANN LAMAR and MARK W. BOURQUIN,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
June 12, 2007

No. 267206
Clinton Circuit Court
LC No. 05-009801-CH

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff Charles Harper, Sr., (plaintiff)[1] appeals as of right from the judgment and order that quieted title of a disputed parcel of real property in defendants and dismissed plaintiff's claims of trespass and conversion of property. Plaintiff sued defendants for trespass and conversion when defendants towed several of plaintiff's vehicles that were parked on the paved lot that encroaches upon the disputed parcel. Defendants filed a counterclaim seeking to quiet title to the disputed parcel in them, alleging that they had gained ownership by adverse possession or acquiescence. The circuit court held that the reversionary clause in the original 1899 deed in plaintiff's chain of title defeated plaintiff's title in the disputed property. Because it found that the contingency that divested a railroad company, CSX Corp., of its interest had occurred before the conveyance, the trial court found that the CSX Corp. did not have an

[1] The claim of appeal was filed in the name of Charles Harper, Sr., only. For the sake of clarity, we will refer to a singular plaintiff in this opinion, even though Caroline Harper was also a plaintiff below.

ownership interest to convey to plaintiff when it issued a quitclaim deed to plaintiff. We affirm in part, reverse in part, and remand this case for further proceedings.

Plaintiff argues that the trial court erred when it failed to apply MCL 554.62 and MCL 554.63. Those statutes limit the enforceability of a right of termination to thirty years from the creation of a terminable interest, or, if the interest was created before the enactment of the statute on March 29, 1968, to one year from the date of the statute's enactment, unless the interest is recorded. We review the trial court's factual findings following a bench trial for clear error and its legal conclusions de novo. *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 291-292; 706 NW2d 897 (2005), aff'd on other grounds 475 Mich 857 (2006).

The reversionary interest in the original deed to the railroad provided that a reversion would occur if the railroad ceased to maintain a depot on the land. The trial court concluded that because the railroad ceased maintaining a depot at some unspecified point before issuing the quitclaim deed to plaintiff, the property reverted back to the heirs of the original grantors, the McCrumbs. However, the reversionary interest was never recorded. Therefore, under the statutes noted above, the enforceability of the right of termination was available only until March 29, 1969. It is simply not clear from the record when the railroad ceased maintaining a depot. If it did so after March 29, 1969, then the statutes invalidated the reversion clause, and the railroad was free to convey its interest in the property to plaintiff.

Moreover, we conclude that even if the railroad ceased maintaining a depot before March 29, 1969, the railroad nevertheless was free to convey its interest in the property to plaintiff.

The original deed conveyed to the railroad a fee interest subject to condition subsequent. An estate is subject to condition subsequent if it vests but may be defeated by an act, failure to act, or the occurrence of an event that is the condition to the estate. See *De Conick v De Conick*, 154 Mich 187, 191-192; 117 NW 570 (1908). Additionally, the language of the deed – "upon these conditions" – implies that the condition was an integral part of the consideration for which the conveyance was made. That conditional language implies that the phrase was not just a statement of purpose, but was intended to lead to a forfeiture of title when the contingency occurred. See *Quinn v Pere Marquette R Co*, 256 Mich 143, 151, 153; 239 NW 376 (1931).

A right of entry is the grantor's reversionary interest when conveying an estate subject to condition subsequent. *Ditmore v Michalik*, 244 Mich App 569, 580; 625 NW2d 462 (2001). Upon breach of the condition, a right of entry does not terminate the estate in fee until entry by the person having the right of entry. *Ludington & N R Co v Epworth Assembly*, 188 Mich App 25, 36; 468 NW2d 884 (1991). Thus, when the railroad ceased maintaining the depot, the McCrumbs or their heirs could have reentered the land within the statutory period of fifteen years and divested the railroad of its interest. See MCL 600.581(4). There is no evidence that they did so, and the railroad thus could convey the interest to the plaintiff. We conclude that the trial court erred when it found the plaintiff did not have title based on the 1899 deed's reversionary interest.

However, defendants claim that *they* obtained title to the land through adverse possession or acquiescence. The trial court did not hear evidence on this issue or make adequate findings of fact on the record for this Court to review. MCR 2.517(A)(1). Thus, we remand this issue to the trial court to determine whether defendants' claims have merit.[2]

Finally, plaintiff argues that the trial court erred when it found Charles Harpers' testimony of the value of the towed vehicles not credible and dismissed the conversion claim. We review the trial court's findings of fact following a bench trial for clear error. A finding is clearly erroneous when we are left with a definite conviction that a mistake has been made. *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App 324, 329-330; 712 NW2d 168 (2005).

Plaintiff bore the burden of proving his damages with reasonable certainty. Although speculative damages are not recoverable, damages are not speculative merely because they cannot be determined with "mathematical precision"; an approximate amount is sufficient. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). Generally, a trier of fact is not justified in disregarding the testimony of an uncontradicted witness, even if that witness is somewhat interested, unless there is "something apparent upon the record to cast discredit upon [his] testimony." *Preuschoff v B Stroh Brewing Co*, 132 Mich 107, 110; 92 NW 945 (1903). However, if uncontradicted testimony is "contrary to circumstances in evidence, or if it contains inherent improbabilities or contradictions which . . . may excite suspicion as to the truth of the testimony, it may be disregarded" by the trier of fact. *Cuttle v Concordia Mutual Fire Ins, Co*, 295 Mich 514, 519; 295 NW 246 (1940).

The measure of damages for conversion is generally the value of the converted property at the time of the conversion. *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994). Charles Harper testified that four vehicles were towed and not returned and that the value of the four vehicles was $60,000. However, he could not identify two of the vehicles taken, could not provide a definite purchase price for any of the vehicles, and could not provide a value that was more than "speculative" by his own admission. Although he claimed that the damages were based on the Mitchell Collision guide value for parts, he did not provide a calculation based on the guidebook. In short, not only did plaintiff fail to prove his damages with mathematical certainty, plaintiff failed to provide any substantiation of the value of the property converted. Further, there were improbabilities in his testimony that would cause suspicion. Plaintiff's original complaint requested only $25,000 in damages for two vehicles. The more than doubling in claimed losses from pretrial to trial, along with plaintiff's inability to do more than speculate about the true value of the vehicles, cast doubt on his credibility. Thus, the trial court did not clearly err when it found that his testimony lacked credibility.

---

[2] Plaintiff claims that he has title to the property under the Marketable Record Title Act, MCL 565.101 *et seq*. However, MCL 565.101 states that "a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interest exists is in the hostile possession of another." Hostile possession would include adverse possession. *Cook v Grand River Hydroelectric Power Co, Inc,* 131 Mich App 821, 826; 346 NW2d 881 (1984).

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter